

**REMARKS**

Favorable reconsideration is respectfully requested in view of the preceding amendments and the following comments. Claim 21 has been canceled without prejudice to reasserting same in a subsequent and continuing application.

The rejection of claims 1 to 11, 13 to 16 and 18 to 20 “under 35 U.S.C. 103(a) as being unpatentable over Spurgat in view of Chodha *et al.* (5,985,970)” is respectfully traversed. Nothing is found in either Chodha or Spurgat that would even remotely suggest the combination of any teachings of one with any particular teachings of the other. In the event that any ground of rejection based on these two references is retained, the Examiner is respectfully requested to point out on the record what would lead anyone of ordinary skill in the art to combine any teachings of one of these references with any teaching of the other and, more particularly, the particular teachings relied upon from each to reconstruct retrospectively that which is expressly called for by each of Applicant’s claims. Any failure to point out on the record what would lead to the selection of these two references and the particular teachings relied upon from each must be regarded as an admission that no such motivation is provided.

Applicant’s disclosed and claimed invention is directed to solving a particular problem with which neither of the references relied upon is even remotely concerned. Applicant respectfully submits that there is nothing in the applied art that would lead any artisan to extract from these references any teaching that would render “obvious” that which is called for by any of Applicant’s instant claims.

It is particularly noteworthy that every single one of Chodha’s examples employs a composition which includes zinc oxide. Moreover, there is no express teaching anywhere in the applied art that would lead an artisan to exclude zinc oxide.

Though Chodha’s disclosure indicates that tack-neutral additives are optional, it means the tack-neutral additives can be selected and determined in accordance with the specific properties desired in the final EPDM rubber product, as described in the specification (column 3, lines 19 to 22). Thus, the addition of the tack-neutral additives to the EPDM rubber composition is not unconditionally optional in Chodha. In Chodha’s Example and Comparative Examples (shown in Table 1) all of the composition contain zinc oxide. There is no positive disclosure in Chodha that the EPDM rubber

composition should be zinc-oxide free "in accordance with the specific properties desired in the EPDM rubber product". Chodha actually teaches away from excluding zinc oxide from contemplated compositions.

Chodha neither discloses nor even remotely suggests that EPDM, to be cured by a peroxide, should be free from zinc oxide when the EPDM is used for an innermost layer of a hose. Though the EPDM rubber composition of Chodha can be used for fabricating hoses as described in the specification (column 1, line 30), there is no disclosure that the EPDM is to be used as an innermost layer of a hose.

Although Spurgat is relied upon as the primary reference, absolutely nothing is found in Spurgat that is directed to the solution of Applicant's problem or that would lead anyone faced with Applicant's problem, to consult Spurgat for any purpose whatsoever. Any combination of these two references is a gross example of attempted retrospective reconstruction based on Applicant's own teachings.

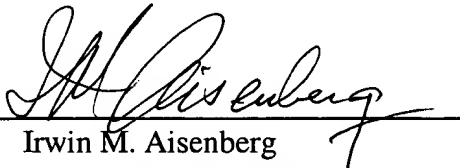
The rejection of claim 12 "under 35 U.S.C. 103(a) as being unpatentable over Spurgat and Chodha et al. in view of Kitami et al. (4,881,576)" is also respectfully traversed in the same manner and for the same reasons as set forth in the preceding remarks. Nothing is found in Kitami that would in anyway overcome the previously noted deficiencies of the other two references. In fact, the application of Kitami to claim 12 further illustrates the retrospective selection of references to reconstruct that which is called for by Applicant's claims.

Having overcome all outstanding grounds of rejection, Applicant's claims are now in condition for allowance and early action toward that end is respectfully solicited.

Respectfully submitted,

JACOBSON HOLMAN PLLC

Date: December 15, 2003  
(202) 638-6666  
400 Seventh Street, N.W.  
Washington, D.C. 20004  
IMA/cmd  
Atty. Dkt. No.: 11981/P67087US0

By   
Irwin M. Aisenberg  
Registration No. 19,007